

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**

**In re:**

**Administrative Order 05-05**

**Order Adopting Interim Local Rules and  
Procedures In Conjunction with Implementation  
of the Bankruptcy Abuse Prevention and  
Consumer Protection Act of 2005**

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October 17, 2005, is the effective date for a majority of the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Reform Act"). This court, under Administrative Order 05-4, has adopted the Interim Rules of Bankruptcy Procedure as recommended by the Judicial Conference of the United States Advisory Committee on Bankruptcy Rules.

A review of the local rules, administrative orders, guidelines, local forms, instructions and other procedural documents was undertaken by this court to identify issues which the court deems necessary to address in conjunction with the October 17, 2005 effective date of the Reform Act and adoption of the Interim Bankruptcy Rules.

This Administrative Order will serve three functions:

First, to assure attorneys and parties in interest that existing local rules, guidelines, or other procedural directives of this court inconsistent with the Bankruptcy Code as amended by the Reform Act or inconsistent with the Interim Bankruptcy Rules will not be enforced with respect to cases governed by the new statute and rules.

Second, where possible, to specifically identify and implement interim changes in the existing local rules and local forms; and

Third, to adopt procedures which will facilitate implementation of new or substantially amended provisions of the Bankruptcy Code as amended by the Reform Act.

Therefore, with advice and participation of the clerk and by unanimous consent of the judges of this court, it is **ORDERED** as follows:

1. Non-enforcement of Inconsistent Local Rules or Procedures - Any local rule or other procedural directive of this court that is inconsistent with the Bankruptcy Code as amended by the Reform Act or the Interim Bankruptcy Rules shall not be

enforced with respect to cases under the Reform Act. Absent any such inconsistency and unless specifically addressed in this order or future orders of the court, the Local Rules and current Administrative Orders shall apply to cases filed in this court under the Reform Act.

2. Amendments to Local Rules - The following amendments shall apply to all cases filed on or after October 17, 2005:
  - A. Local Rule 1006-1(A)(2) is abrogated as a result of adoption of Interim Bankruptcy Rule 1006(b) which deletes the sentence in current Bankruptcy Rule 1006(b) requiring a disclosure that the debtor has not paid an attorney or other person in connection with the case.
  - B. Local Rule 1006-1(A)(4) is amended as follows: “if applicable, include a declaration and signature of non-attorney bankruptcy petition preparer; and” to reference the change from a certificate to a declaration including material mandated by amendments to 11 USC § 110 of the Code by the Reform Act.
  - C. Local Rules 1007-1, 1009-1, 1013-1(C) and (D), 1017-2(A), 1019-1(A), 2002-1(C)(1)(f)(i), 5005-1(C)(3)(c), 5005-1(F)(3) and 9013-1(C)(2) shall be amended to include reference to the requirement for filing payment advices or other evidence of payment as required under 11 USC § 521(a)(1)(B)(iv) and reference to “statements” in these Local Rules shall include the new Official Bankruptcy Forms 22 as required to be filed under the Code as revised by the Reform Act and the “statements” required by 11 USC § 521(a)(1)(B)(v) and (vi) as incorporated into the applicable revised Official Bankruptcy Form Schedules. Where an Official Bankruptcy Form has been adopted for use in filing a required “schedule” or “statement” the form filed shall conform to the revised form adopted by the Judicial Conference for use in cases falling under the Reform Act provisions.
  - D. As a result of amendments to the Code under the Reform Act which make small business provisions mandatory with “election” no longer an option:
    - (1) Local Rule 1020-1. Notice of Election of Small Business Reorganization is abrogated;
    - (2) Local Rule 3017-1 shall be amended to delete reference to Local Rule 1020-1 and shall be amended to read as follows: “...other than a debtor that has been designated a small business debtor under Interim Bankruptcy Rule 1020”;
    - (3) Local Rule 3017-2(A) shall be amended to read as follows: “A plan proponent in a case in which a chapter 11 debtor is designated a small

business debtor under Interim Bankruptcy Rule 1020 may seek conditional approval....”

- E. Local Rules 2083-1(A)(1) and 2083-1(A)(2) are abrogated because they either conflict with, have been replaced by or duplicate provisions of the Bankruptcy Code as amended by the Reform Act or the Interim Bankruptcy Rules.
  - F. Local Rule 3017-2(D)(2) is amended to provide at least 25 days notice of a conditionally approved disclosure statement as required by amended Code § 1125(f)(3)(B).
  - G. Local Rule 4008-1(A) requirement that the Local Form “Reaffirmation Agreement” and Local Form “Motion for Approval of Reaffirmation Agreement Not Signed by Debtor’s Attorney” is abrogated. Instead, the Administrative Office of the US Court’s Director’s Procedural forms for reaffirmation agreements, as revised for use in Reform Act cases, shall be used, pending review and adoption of these forms locally in this court.
  - H. Local Rule 1010-1 is amended to change the title from “Summons in Ancillary Cases” to “Summons in Foreign Nonmain Proceeding Under Chapter 15” and to replace reference in the Rule to Local Form “Summons in Section 304 Ancillary Proceeding” with reference to Local Form “Summons in Foreign Nonmain Proceeding Under Chapter 15.” Local Rule 5081-1(A)(2) reference to “§ 304 ancillary case filing fees” is revised to read “filing fees under Chapter 15”.
3. Procedures for Implementation of New or Substantially Amended Code Sections - The following procedures shall apply to all cases filed on or after October 17, 2005:
- A. **Chapter 7 Fee Waivers** - In accordance with the “Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” promulgated on August 11, 2005:
    - (1) Applications which do not substantially conform to the Official Bankruptcy Form or that are otherwise defective shall be noted as deficient and the debtor shall have 10 calendar days to file an amended application.
    - (2) Unless otherwise ordered by the court, the application will be considered on an ex parte basis.
    - (3) If the fee waiver application is denied and the court directs the debtor to

pay the fee in installments, the initial payment shall be due 10 calendar days after entry of the order. Failure to timely remit the payment will result in the case being dismissed without further notice or hearing.

- (4) Debtors who had been granted permission to pay the filing fee in installments, including those debtors whose chapter 13 case is converted to chapter 7 who later seek waiver of the filing fee, must file the waiver application prior to next installment payment date to avoid dismissal of the case for nonpayment.
- (5) If a debtor is granted a chapter 7 fee waiver and the case is converted to chapter 12 or 13, the debtor shall pay, as applicable, the full chapter 12 or 13 filing fee or file an application to pay the fee in installments within 10 days after entry of the conversion order.
- (6) The court may vacate an order waiving the filing fee if developments in the case or administration of the case demonstrate that the waiver was unwarranted. In the event this occurs, the debtor shall pay the full filing fee or, if the order permits, file an application to pay the fee in installments within 10 days after entry of the order.
- (7) Entry of an order waiving the chapter 7 filing fee shall be deemed an order waiving other fees scheduled by the Judicial Conference under 28 USC §§ 1930(b) and (c) unless otherwise ordered by the court.
- (8) The court may direct the clerk not to accept petitions under the chapter 7 fee waiver provisions if the court determines that the debtor is filing petitions in a manner that would constitute abuse of the bankruptcy system.

**B. Requirement to Obtain Consumer Credit Counseling Prior to Filing Bankruptcy** - Under 11 USC §§ 109(h) and 521(b), and Interim Bankruptcy Rule 1007(b)(3), an individual debtor must designate on the Official Bankruptcy Form Voluntary Petition in the designated box either that the debtor has obtained the counseling or the debtor is requesting a waiver of the requirement to obtain such counseling prior to filing based on exigent circumstances. The court shall review each petition to determine compliance as follows:

- (1) If the debtor does not make any indication on the petition regarding counseling or if the debtor indicates on the petition that the required counseling has been obtained but does not file with the petition the certificate provided by the counseling service and a copy of any debt repayment plan developed during such counseling, the clerk shall serve a

deficiency notice that directs the debtor to comply with these requirements within 15 days, failing which the case will be dismissed without further notice or hearing. Compliance shall mean either (a) confirming that the counseling requirement was met before the filing of the petition by filing the certificate provided by the counseling service and a copy of any debt repayment plan developed during such counseling; or (b) the filing within the 15 day period of a certification satisfying the requirements for a 30 day exemption under §109(h)(3)(A).

- (2) If the debtor was unable to obtain such counseling before filing but could qualify under the Code for additional time to comply with this requirement post filing, the debtor must file a certification stating the amount of additional time requested and include the certification statements required under § 109(h)(3)(A) citing in detail the circumstances that would support granting the request under this provision. The court will review the certification and if it determines that the certification satisfies the requirements in § 109(h)(3)(A) and is otherwise satisfactory to the court, the court may enter an order without notice or hearing granting an exemption from the requirements in § 109(h)(1) for a period not to exceed 30 days after the petition was filed.
- (3) If a debtor seeks relief under § 109(h)(3)(B) extending the exemption beyond 30 days after the filing of the petition, the debtor must file a motion establishing cause for the additional extension, which the court will consider after hearing upon notice to the trustee and the U.S. trustee.
- (4) If the debtor seeks waiver of the requirement under § 109(h)(4), a request for a determination setting forth the facts in support of such request shall be filed with the court and served on the trustee, and the U.S. trustee. If the trustee files an objection within 10 days, the court shall set a hearing on the matter. If no objection is filed, the court will enter an order granting the waiver.

**C. Requests for Service by Creditors Under 11 USC § 342(f)** - A creditor filing a notice pursuant to 11 USC § 342(f) shall file such notice directly with the National Creditor Registration Service (NCRS) established by the Administrative Office of the US Courts for this purpose. The clerk is directed to forward any such requests filed in this court to the NCRS for processing. The NCRS website is <https://www.ncrsuscourts.com/> and the toll free number is 877-837-3424.

**D. Amendments to Statutory and Miscellaneous Fees** - The Reform Act will result in changes affecting Statutory and Miscellaneous fees. The Administrative Office of the US Courts has published a memorandum dated

September 27, 2005 “Changes in Statutory and Miscellaneous Bankruptcy Fees Effective October 17, 2005” which includes a revised “Bankruptcy Miscellaneous Fee Schedule” and “Frequently Asked Questions” which will be posted on this court’s web site. Documents filed not accompanied by the appropriate fee as set forth in this memorandum or subsequently issued fee Administrative Office fee memorandums will be processed in accordance with already established directives in this court which address fee deficiencies and fee overpayments.

- E. **Filing of Official Bankruptcy Form 22 Upon Conversion of Case** - In cases of individual debtors converted to chapters 11 or 13, the debtor shall file Official Bankruptcy Form 22 (applicable for the chapter converted to) within 15 days of entry of the conversion order. In cases converted to chapter 7 from chapters 11, 12 or 13, unless otherwise ordered by the court, the debtor shall file the Official Bankruptcy Form 22 “Statement of Current Monthly Income and Means Test Calculation for Use in Chapter 7” within 15 days of conversion.
- F. **Establishment of Deadline for Objection in Chapter 13 Cases to Confirmation Scheduled Earlier Than 20 Days After the Date of the 341 Meeting of Creditors** - As allowed under § 1324(b), the court has determined it is in the best interests of the creditors and the estate to hold the confirmation hearing earlier than 20 days after the date of the meeting of creditors. Any creditor objecting to holding confirmation earlier shall object at or before the meeting of creditors. Notice of this objection deadline shall be included in the 341 meeting notice.
- G. **Pre-Confirmation Payments in Chapter 13 Cases** - As described more fully in Administrative Order 05-6, all pre-confirmation payments on account of creditors provided for in the plan shall be made to the Chapter 13 trustee, including adequate protection payments and lease payments required under § 1326(a)(1).
- H. **New Local Form Debtor(s)’ Certificate of Compliance and Request for Confirmation of Chapter 13 Plan** - In chapter 13 cases, debtors must file a new local form “Debtor(s)’ Certificate of Compliance and Request for Confirmation of Chapter 13 Plan.” If this certificate is filed at or prior to the meeting of creditors and all other requirements for an uncontested confirmation have been met, the plan can be confirmed as uncontested. If the certificate is not filed at or prior to the meeting of creditors, the case will proceed to the scheduled confirmation hearing and the certificate must be filed at or prior to the confirmation hearing.

**I. Order Confirming Termination of Automatic Stay Under 11 USC**

**§ 362(c)(3)(A)** - A party in interest seeking entry of an ex parte order confirming that the automatic stay has expired under 11 USC § 362(c)(3)(A) shall, upon expiration of the 30-day period after the case was filed:

- (1) file a certificate which:
  - (a) recites the facts which establish that the status of the debtor is that as described in § 362(c)(3); and
  - (b) includes a statement that no order continuing the stay has been entered under § 362(c)(3)(B); and
- (2) submit a proposed order confirming termination of the stay which sets forth the statement attested to by the creditor in the certificate filed under subdivision (I)(1) above.

**J. Order Confirming That Automatic Stay is Not in Effect Under 11 USC**

**§ 362(c)(4)(A)(i)** - A party in interest seeking entry of an ex parte order under § 362(c)(4)(A)(ii) confirming that the automatic stay is not in effect under 11 USC § 362(c)(4)(A)(i) shall:

- (1) file with the court a certificate which
  - (a) recites the facts which establish that the status of the debtor is that as described in § 362(c)(4)(A)(i); and
  - (b) includes a statement that no order imposing the stay has been entered under § 362(c)(4)(B); and
- (2) submit a proposed order confirming that no stay is in effect which sets forth the statements attested to by the creditor in the certificate filed under subdivision (J)(1) above.

**K. Clerk's Notice Under 11 USC § 362(l)(4)(B) Advising Debtor and Lessor That Automatic Stay is Not in Effect Under 11 USC § 362(b)(22)** - The

clerk shall provide the notice required under 11 USC § 362(l)(4)(B) upon expiration of the 30-day period provided by § 362(l) that the stay is not in effect. If any funds were deposited under § 362(l), the court shall order the clerk to disburse the funds only upon the filing of a motion served on all affected parties.

Any funds deposited under § 362(l) shall be deposited into the non-interest bearing treasury account of the court and the clerk shall not disburse any

funds absent a court order. **Note:** Reference in this Order to funds deposited under § 362(L) is not a finding by this court that the prerequisite for depositing money into the court registry under § 362(L)(1)(A) exists under Florida law.

- L. Order Confirming That Automatic Stay is Not in Effect Under 11 USC § 362(b)(23)** - Creditors seeking entry of an ex parte order confirming that the automatic stay is not in effect under 11 USC § 362(b)(23), if the debtor has not filed an objection under subsection (m)(2) within the 15-day period after the lessor files and serves the certification described in subsection (b)(23), shall:

- (1) file a Local Form Certificate of No Response and
- (2) submit a proposed order confirming that the stay is not in effect.

- M. Dismissal Under 11 USC § 521(e)(2)(B) for Failure to Provide Tax Return to Trustee** - Section 521(e)(2)(A)(I) requires debtors to provide their most recent tax return to the trustee no later than 7 days before the date first set for the first meeting of creditors. Section 521(e)(2)(ii) requires debtors to provide copies of returns to creditors who timely request a copy. Section 521(e)(2)(B) directs the court to dismiss the case if the debtor fails to comply with either 521(e)(2)(A)(i) or (ii) “unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor.” The court will dismiss cases under this section only upon motion and after a hearing on notice to the debtor. Any motion to dismiss filed by a creditor must recite that the creditor timely requested a copy of the return under Interim Bankruptcy Rule 4002(b)(4).

- N. Automatic Dismissal Under 11 USC § 521(i)(1)** - Section 521(i)(1) provides for “automatic” dismissal on the 46<sup>th</sup> day after the date of the filing of the petition if a voluntary chapter 7 or 13 debtor fails to file all of the information required under § 521(a)(1) within 45 days after the petition. Generally, under this court’s local rules and procedures, cases will be dismissed by court order earlier than the 46<sup>th</sup> day if there are deficiencies in the filing requirements under § 521(a)(1). Nevertheless, if a case remains pending for 45 days without the debtor complying with the requirements under § 521(a)(1), dismissal shall not be reflected on the docket absent the filing of a motion and entry of an order confirming dismissal of the case effective on the 46<sup>th</sup> day after the filing of the petition.

- O. Payment Advices Required Under 11 USC § 521(a)(1)(B)(iv)** - If the debtor has not been employed during the time period stated in this section, the debtor should file a statement to this effect to avoid automatic dismissal of the case. Before filing, payment advices and other documents filed in compliance with



this provision should be redacted in accordance with Local Rule 5005-1(A)(2) and as provided by the Local Rule, the clerk will not be responsible for redacting privacy information submitted.

- P. **Local Forms, Guidelines and Clerk's Instructions** - These local documents will be revised as required by the Reform Act and used as applicable for cases under the Reform Act.
- Q. **Requirement to File Certification of Completion of Financial Management Course Before Entry of Discharge in Chapter 7 or Chapter 13 Cases** - If the certificate of completion of the required financial management course is not filed by the time the case is administratively ready for closing, the case shall be closed without entry of the discharge. If the debtor subsequently completes the requirement, the debtor may file the certificate accompanied by a motion to reopen case to request entry of discharge and payment of any required reopening fee.
- R. **Requests for Copies of Debtor's Tax Information** - Requests for copies of the debtor's tax information under 11 USC § 521 shall be in accordance with the Administrative Office of the United States Courts "Director's Interim Guidance Regarding Tax Information Under 11 USC § 521" dated September 20, 2005 and any subsequent directives issued. This document will be posted on the court website.

**ORDERED** in the Southern District of Florida on October 6, 2005.

/s  
ROBERT A. MARK  
Chief United States Bankruptcy Judge

cf: All SD Bankruptcy Judges  
Clerk of Court